

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
LAFAYETTE DIVISION**

Saythong Boutarath
and Somkhith Boutarath

Civil Action No.

Versus

Judge

Berkley Regional Insurance Company,
R.W. Delaney Construction Company,
and Richard Dawson

Magistrate

NOTICE OF REMOVAL

Defendants, Berkley Regional Insurance Company (“BRIC”), R.W. Delaney Construction Company (“R.W. Delaney”), and Richard Dawson (“Dawson”) (collectively, “Defendants”), pursuant to 28 §§ 1332, 1441, and 1446, submit this Notice of Removal for the state court action filed by Plaintiffs, Saythong Boutarath and Somkhith Boutarath (“Plaintiffs”), from the 15th Judicial District Court for Lafayette Parish, State of Louisiana, to the U.S. District Court for the Western District of Louisiana, Lafayette Division.

1.

On June 27, 2022, Plaintiff filed a civil action bearing Docket No. C-20223342-J and entitled “Saythong Boutarath and Somkhith Boutarath vs. Berkley Regional Insurance Company, R.W. Delaney Construction Company, and Richard Dawson” in the 15th Judicial District Court for Lafayette Parish, State of Louisiana.¹ This lawsuit arises from an auto accident involving Plaintiffs that occurred on or about July 31, 2021 in Lafayette Parish, Louisiana. *Id.* Plaintiffs contend that Defendants are responsible for the alleged accident and injuries.

¹ Exhibit 1, Plaintiffs’ Petition for Damages, filed on June 27, 2022.

2.

Plaintiffs' counsel requested the issuance of Citations to Defendants, which were issued by the Lafayette Parish Clerk of Court on June 28, 2022.²

3.

On July 11, 2022, R.W. Delaney was served with Plaintiffs' lawsuit through its registered agent for service of process, Corporation Service Company.³

4.

On July 11, 2022, BRIC was served with Plaintiffs' lawsuit through the Louisiana Secretary of State and then its registered agent for service of process.⁴

5.

On July 7, 2022, Dawson was served with Plaintiffs' lawsuit by certified mail in Mississippi via long-arm citation.⁵

6.

This Notice of Removal is timely filed under 28 U.S.C. §1446(b)-(c) because it has been filed within thirty (30) days after service on all of the Defendants, and within one (1) year after commencement of this action by Plaintiff.

7.

The U.S. District Court for the Western District of Louisiana has jurisdiction over this civil action under 28 U.S.C. §1332, which provides that "district courts shall have original jurisdiction

² See, e.g., Exhibit 2, Citation issued by Lafayette Parish Clerk of Court to BRIC.

³ Exhibit 3, Notice of Service from CSC to R.W. Delaney and Citation.

⁴ Exhibit 4, Notice of Service from the Louisiana Secretary of State and Notice from CT Corporation to BRIC.

⁵ Exhibit 5, Certified Mail Long-Arm Letter to Dawson from Holly Lamarche, counsel for Plaintiffs.

of all civil actions where the matter in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs, and is between—(1) citizens of different States. . . .”⁶

8.

Plaintiffs are residents and citizens of Louisiana.⁷

9.

BRIC is an Iowa corporation with its principal place of business in Iowa.

10.

R.W. Delaney is a Mississippi corporation, organized under the laws of the state of Mississippi, and with its principal place of business in Natchez, Mississippi.

11.

Dawson is a resident and citizen of Mississippi.

12.

Therefore, there is complete diversity between Plaintiffs and Defendants.

13.

It is facially apparent from the Petition that the amount in controversy for Plaintiffs’ claims exceeds \$75,000 based on the alleged personal injuries to both Plaintiffs.⁸

⁶ 32 U.S.C. § 1332(a)(1).

⁷ Exhibit 1, at p. 1 (stating that Petitioners are “domiciled in Lafayette Parish, Louisiana”).

⁸ Exhibit 1, at p. 2 (alleging “damage to the vehicle and personal injury to **both** petitioners”) (emphasis added); *see also id.* at pp. 3–4 (alleging that both Petitioners “suffered injuries to various parts of their bodies, including, but not limited to, the following: neck, back, and general soreness to their entire bodies, and any and all other injuries to be shown upon trial of this matter.”). Petitioners also demanded damages for past, present, and future general damages, medical expenses, and lost wages. *Id.* Upon information and belief, both Plaintiffs have been treated with injections for their alleged injuries.

The Eastern District of Louisiana has compiled and cited cases from Louisiana state courts to illustrate that alleged back and neck injuries for one plaintiff “have generated awards greater than \$75,000, even when surgery was not performed.” *Wilson v. J.B. Hunt Transport, Inc.*, No. CV 19-14635, 2020 WL 549736, at *2 (E.D. La. Feb. 4, 2020) (citing *Piazza v. Behrman Chiropractic Clinic, Inc.*, 601 So. 2d 1378 (La. 1982) (\$111,600 for pain and suffering, medical expenses, disability, past and future, and loss of consortium for herniated disc); *Fontenot v. Laperouse*, 774 So. 2d 278 (La. App. 3rd Cir. 2000) (\$120,000 for herniated and bulging disc)); *see also Rivera v. Bechtler*, No. CV 18-6916, 2019 WL 3712180, at *2 (E.D. La. Aug. 7, 2019).

14.

Venue of this removed civil action is also proper in this Court pursuant to 28 U.S.C. §§1441(a) and 1446(a) because Lafayette Parish, from which the state court action has been removed, belongs to and/or forms part of this District and the Lafayette Division.

15.

By filing this Notice of Removal, Defendants expressly consent to the removal.

16.

Copies of all process, pleadings, and orders that have been filed in this state court action in the possession of Defendants are attached to this Notice of Removal.⁹

17.

Pursuant to 28 U.S.C. 1446(d), Defendants have this day given and served written notice of this removal on all parties by emailing this pleading and all attachments to Plaintiffs' counsel of record, Holly Lamarche. Defendants have also filed a copy of this Notice of Removal with the Lafayette Parish Clerk of Court as required by 28 U.S.C. §1446(d).¹⁰

18.

By this Notice of Removal, Defendants do not waive any defenses and objections they may have to this action. Defendants do not intend any admission of liability by this Notice of Removal and they expressly reserve all defenses, motions, and/or pleas. Defendants also reserve the right to supplement and/or amend this Notice of Removal.

19.

In accordance with the requirements of 28 U.S.C. 1446(a) and Rule 11 of the Federal Rules of Civil Procedure, undersigned counsel states that the averments of this Notice of Removal are

⁹ Exhibit 6, State Court Filings.

¹⁰ Exhibit 7, Notice of Filing of Removal.

well-grounded in fact and are warranted by existing law and that this matter is within the jurisdiction of this Court pursuant to 28 U.S.C. §1332(a).

WHEREFORE, Defendants pray this Notice of Removal be deemed good and sufficient as required by law, that the state court action, “Saythong Boutarath and Somkhith Boutarath vs. Berkley Regional Insurance Company, R.W. Delaney Construction Company, and Richard Dawson” in the 15th Judicial District Court for Lafayette Parish, State of Louisiana, be removed from state court to the U.S. District Court for the Western District of Louisiana, Lafayette Division, and that this Court have and assume full and complete jurisdiction thereof and issue all necessary orders and grant all general and equitable relief to which Defendants might be entitled, and that all further proceedings in the state court be discontinued.

Respectfully submitted,

NEUNERPATE

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Delaney, and Dawson***

Certificate of Service

I HEREBY CERTIFY that a copy of the foregoing has this date been served on all counsel of record in this proceeding by electronic mail and the Court’s CM/ECF system.

Lafayette, Louisiana this 27th day of July 2022.

/s/ Phillip M. Smith
COUNSEL